

EXHIBIT B
(to Plaintiff's Motion for Partial Summary Judgment)

VA Handbook Part IX

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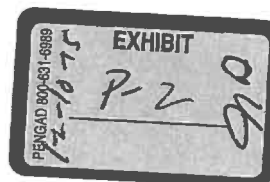
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PART IX

PAY ADMINISTRATION

PART IX. PAY FOR VHA PHYSICIANS AND DENTISTS

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PART IX. PAY FOR VHA PHYSICIANS AND DENTISTS

1. SCOPE. This part contains mandatory pay administration regulations and procedures for Veterans Health Administration (VHA) physicians and dentists in the Department of Veterans Affairs (VA) appointed under the authority of 38 U.S.C. 305, 7306, 7401(1), or 7405(a)(1)(A). The Secretary retains authority to act on pay matters involving the Under Secretary for Health.

2. AUTHORITY. 38 U.S.C. 305, § 7421(a); 7431, 7432 and 7433 as amended by Public Law 108-445.

3. EXCLUSIONS. The following categories of physicians and dentists are ineligible for pay under this part:

a. Interns and residents (whether paid by stipend or through a disbursement agreement) appointed under 38 U.S.C. 7406;

b. Fee-basis employees appointed under 38 U.S.C. 7405(a)(2);

c. Fellows (including special fellows such as Health Services Research and Development, Medical Informatics, Advanced Geriatrics, and Advanced Spinal Cord Injury) appointed under 38 U.S.C. 7405(a)(1)(D);

d. Research trainees employed as Associate Investigators appointed under 38 U.S.C. 7405(a)(1)(D); and

e. Physicians and dentists employed at the Manila Outpatient Clinic who are foreign nationals paid under local national pay schedules established by the Department of State (DOS).

4. GENERAL. The pay of VHA physicians and dentists consists of three elements: base pay, market pay, and performance pay. This policy is intended to make possible the recruitment and retention of the best qualified workforce capable of providing high quality care for eligible veterans. VA is committed to assuring that the levels of annual pay (base pay plus market pay) for VHA physicians and dentists are fixed at levels reasonably comparable with the income of non-VA physicians and dentists performing like services.

5. DEFINITIONS

a. **Aggregate Pay.** The sum of all payments made to a physician or dentist in a calendar year, exclusive of lump sum annual leave, reimbursement of travel, backpay, and severance. Physicians and dentists appointed under 38 U.S.C. 305, 7306, 7401(1), and 7405(a)(1)(A) may not be paid aggregate compensation in a calendar year higher than the annual pay (excluding expenses) received by the President of the United States.

b. **Annual Pay.** The sum of the base pay rate and market pay. Annual pay is basic pay only for purposes of computing civil service retirement benefits, lump sum annual leave payments, life insurance, thrift savings plan, work injury compensation claims, severance pay, recruitment, relocation, and retention incentives, continuation of pay, and advances in pay.

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c. **Base and Longevity Pay Schedule.** A table consisting of 15 rates of base pay, designated as steps 1 through 15. Physicians and dentists advance on the table at the rate of one step for every 2 years of VHA service.

d. **Base Pay Rate.** The rate for a step on the Physician and Dentist Base and Longevity Pay Schedule.

e. **Basic Pay.** The rate of pay fixed by law or administrative action for the position held by an employee before any deductions and exclusive of additional pay of any kind (e.g., market pay, performance pay, recruitment incentive etc.) as prescribed under 38 U.S.C. 7431. However, annual pay is basic pay only for purposes of computing civil service retirement benefits, lump sum annual leave payments, life insurance, thrift savings plan, work injury compensation claims, severance pay, recruitment, relocation, and retention incentives, continuation of pay, and advances in pay. In no instance is performance pay considered part of any individual's rate of basic pay.

f. **Change in Assignment.** A permanent change in official duty station, change in duty basis (i.e., to/from full-time, part-time or intermittent), change in tier, [a change in the amount of time a physician or dentist spends performing non-clinical duties or activities (i.e., time spent away from performing clinical duties within the specialty or assignment),] or a significant change in duties or assignments as determined by an appropriate management official.

g. **Compensation Panel.** A group of physicians or dentists responsible for the evaluation of physicians or dentists and making recommendations to the approving official for annual pay.

h. **Longevity Step Increase.** Advancement to the next higher step of the grade based upon completing the required waiting period of two years (104 weeks) of creditable service.

i. **Management Official.** A person who has supervisory authority over staff or program management responsibility.

j. **Market Pay.** A component of basic pay intended to reflect the recruitment and retention needs for the specialty or assignment of a particular VHA physician or dentist.

k. **Performance Pay.** A component of compensation paid to recognize the achievement of specific goals and performance objectives prescribed on a fiscal year basis by an appropriate management official. [The purpose of performance pay is to improve the quality of care and health care outcomes through the achievement of specific goals and objectives related to the clinical, academic and research missions of VA.] Performance pay is paid as a lump sum in accordance with paragraph 12 of this part.

l. **Tier.** A level within the annual pay range for an assignment or specialty.

m. **Tier Exception.** Approval to exceed the maximum amount of a tier in the nationwide pay range under the provisions of paragraph 14d or Appendix IX-B.

n. **Total Pay.** The sum of all payments made to a physician and dentist. Includes base pay, market pay, performance pay, recruitment, relocation, and retention incentives. Excludes cash awards. In Alaska, Hawaii, and Puerto Rico, where the Office of Personnel Management has approved a non-foreign cost-of-living allowance (COLA) under 5 U.S.C. 5941, total pay also includes the COLA.

o. **Year.** For purposes of determining base pay under paragraph 7, a year is 52 calendar weeks.

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6. RESPONSIBILITIES

a. Secretary

(1) Establishes the market pay of the Under Secretary for Health utilizing an appropriate health care labor market.

(2) Approves nationwide annual pay ranges after consideration of recommendations of the Under Secretary for Health and after concurrence by the General Counsel and the Assistant Secretary for Human Resources and Administration.

b. Under Secretary for Health (or Designee)

(1) Recommends annual pay ranges for each specialty or assignment to the Secretary at least once every two years (this authority may not be redelegated);

(2) Establishes a Steering Committee comprised of [] management representatives to develop recommendations for annual pay ranges for each specialty or assignment. [The Steering Committee may include no more than one physician and one dentist executive serving in a Deputy Under Secretary, Principal Deputy Under Secretary, Network Director, or Facility Director position.] The Steering Committee reviews available national pay sources and recommends applicable sources that describe overall compensation practices in broad geographic scope;

(3) Establishes VHA performance guidelines and objectives for performance pay determinations;

(4) Approves annual pay (plus non-foreign COLA where applicable) in excess of \$325,000 per annum;

(5) Approves performance pay amounts for physicians and dentists in VACO and those in positions centralized to the Secretary or the Under Secretary for Health;

(6) Approves requests for exceptions to the nationwide pay ranges in accordance with the provisions of appendix B of this part;

(7) Ensures physicians and dentists in VACO and those in positions centralized to the Secretary or the Under Secretary for Health have a market pay review at least once every 24 months and at such other times deemed necessary;

(8) Approves assignment to tier and annual pay for tier 4 national program assignments; and

(9) Approves assignment to tier and annual pay for those physicians and dentists assigned to any tier on the Executive annual pay range.

c. Network Directors (or Designee)

(1) Approve membership to the physician and dentist Compensation Panel at the VISN level;

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(2) Review and recommend approval or disapproval of annual pay (plus non-foreign COLA where applicable) in excess of \$325,000 per annum that requires Under Secretary for Health approval (this authority may be redelegated in whole or in part);

(3) Approve requests for annual pay greater than \$275,000, not to exceed \$325,000, in accordance with the provisions of paragraph 14d(1) only when a tier exception is not required;

(4) Approve annual pay (plus non-foreign COLA where applicable) up to \$325,000 per annum for physicians and dentists under their jurisdiction;

[(5) Establish VISN performance goals and a]pprove performance pay amounts for physicians and dentists under their jurisdiction;

[(6) Ensure] physicians and dentists under their jurisdiction [have a market pay] review at least once every 24 months and at such other times deemed necessary;

[(7)] Approve [all] annual pay and performance pay amounts for facility Chiefs of Staff; and

[(8)] Approve assignment to tier and annual pay for tier 4 network assignments.

d. Facility Directors (or Designee)

(1) Approve membership to the physician and dentist Compensation Panel at the local level;

(2) Approve assignment to tier and annual pay (plus non-foreign COLA where applicable) for individuals not to exceed \$275,000 per annum or other threshold set at the VISN level for tier 1, tier 2, and tier 3 assignments under their jurisdiction (excluding Chief of Staff). Performance pay and recruitment, retention, and relocation incentives are approved without regard the limitations prescribed under paragraph 14d of this part. The approval of incentives may not be redelegated; [and

(3)] Approve performance pay amounts for physicians and dentists at their facility, except Chiefs of Staff. The authority to make performance pay decisions may be delegated to an appropriate management official.

[]

e. Chiefs of Staff and Other Management Officials

(1) [Establish and c]ommunicate performance [goals and] objectives to individual physicians and dentists employed at their facility; []

(2) Make performance pay recommendations [or decisions, as appropriate; and

(3) Refer physicians and dentists at their facility to the applicable Compensation Panel for a market pay review at least once every 24 months and at such other times deemed necessary.]

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f. **Deputy Assistant Secretary for Human Resources Management .** The Deputy Assistant Secretary for Human Resources Management advises the Under Secretary for Health and other key officials on the regulations, policies, and procedures contained in this part.

g. **Human Resources Management Officers []**

(1) Advise facility management on the regulations, policies, and procedures contained in this part;

(2) Ensure that the policies and procedures concerning physician and dentist pay as described in this part are adhered to;

(3) [Advise all compensation panels and approving officials;

(4)] Ensure that covered employees are aware of the policies governing the establishment and adjustment of physician and dentist pay; and

[(5)] Prepare requests [and ensure compliance for exceptions to annual pay limitations] in accordance with the procedures in paragraph 14.

7. BASE PAY

a. Each physician and dentist covered by this part is entitled to a base pay rate determined under the Physician and Dentist Base and Longevity Pay Schedule.

b. The Physician and Dentist Base and Longevity Pay Schedule contains 15 rates of base pay, designated as steps 1 through 15. The rates of pay that correspond to each step are published annually on the Office of Human Resources Management Web site.

c. The base pay rate payable to a physician or dentist is determined by the number of total years of service [worked as a] physician or dentist [] in the VHA as reflected by his/her VA service date. The total years of service will be applied to the step rate payable as follows. For the purposes of this paragraph, 104 weeks of creditable service will be counted as two years of service.

Total Service (as determined by VA service date)	Rate Payable
Two years or less	Step 1
More than 2 years and not more than 4 years	Step 2
More than 4 years and not more than 6 years	Step 3
More than 6 years and not more than 8 years	Step 4
More than 8 years and not more than 10 years	Step 5
More than 10 years and not more than 12 years	Step 6
More than 12 years and not more than 14 years	Step 7
More than 14 years and not more than 16 years	Step 8
More than 16 years and not more than 18 years	Step 9
More than 18 years and not more than 20 years	Step 10
More than 20 years and not more than 22 years	Step 11
More than 22 years and not more than 24 years	Step 12
More than 24 years and not more than 26 years	Step 13
More than 26 years and not more than 28 years	Step 14
More than 28 years	Step 15

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NOTE: *A description of the types of service creditable towards the calculation of the VA service date are contained in appendix A of this part.*

d. Base pay rates are adjusted on the same effective date and by the same percentage as any General Schedule adjustment under 5 U.S.C. 5303, exclusive of locality comparability payments under 5 U.S.C. 5304.

e. Since the step rate is based solely on tenure, a physician or dentist may not be adjusted higher or lower in step, except for corrections under subparagraph f below.

f. A physician or dentist with unverified prior VHA service at the time of appointment will be placed at Step 1. Upon receipt of the employee's Merged Record Personnel Folder, the step will be redetermined in accordance with the provisions of subparagraph c above. The responsible Human Resources office will process any step adjustment resulting from this review as a retroactive correction to the appointment action. When processing a correction of this type, the Compensation Panel should review its previous recommendation of the provider's market pay to ensure that it has properly considered the provider's actual prior service, and if necessary, it may also recommend retroactively correcting market pay at this time. This may result in an increase or decrease in the market pay component. [In instances where a compensation panel is not required (i.e. Pay Table 6) the approving official will review his/her previous decision.]

8. LONGEVITY STEP INCREASES

a. **Eligibility.** Longevity step increases (LSIs) will be granted to physicians and dentists that are receiving less than the maximum step rate (step 15) on the Physician and Dentist Base and Longevity Pay Schedule. If such an increase would cause the employee's annual pay (sum of base and market pay) to exceed the amount of annual pay (excluding expenses) received by the President of the United States as specified in 3 U.S.C. 102, the employee will only receive the portion of the increase that does not exceed the annual limitation. The following remark will be used for LSIs that result in an annual pay rate in excess of the annual limitation: "Annual pay rate (base pay plus market pay) would be \$ _____ if not limited by 38 U.S.C. 7431(e)(4) and 3 U.S.C. 102." See paragraph 14c for information regarding the annual pay limitation.

b. **LSI Waiting Period.** Each eligible physician and dentist will be advanced one step upon completion of two years (104 weeks) of creditable service in VHA.

c. **Creditable Service.** The following service is counted as creditable in the computation of waiting periods for longevity step increases:

(1) Continuous paid full-time, part-time, or intermittent assignment on an indefinite or time limited basis, in the VHA under authority of 38 U.S.C. 7401(1), 7405(a)(1)(A) or 7306.

NOTE: *The period spent in part-time service is covered as though it had been performed on the basis of full-time service. For an intermittent employee, 1 day of credit is given for each day of service in a pay status; 520 compensable days are equivalent to a waiting period of 104 calendar weeks; the accumulation of 520 compensable days must extend over a period of not less than 104 calendar weeks.*

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(2) Time elapsing on annual, sick or other leave with pay, including periods for which annual or sick leave is advanced.

(3) Leave without pay not to exceed a total of 30 calendar days in the LSI waiting period.

(4) Active military duty when otherwise creditable service is interrupted.

(5) Any period of 120 calendar days or less between discharge or termination of active military service and re-employment under mandatory provisions of any statute or regulation.

(6) Actual service rendered prior to an extended absence on leave without pay, regardless of the length of such absence, which is due to injury or illness incurred as a direct result of employment.

(7) Leave of absence granted to an employee who is receiving compensation for work injuries under 5 U.S.C. chapter 81.

d. **Effective Date.** Longevity step increases are effective on the first day of the first pay period following completion of the required waiting period.

9. MARKET PAY

a. Each physician and dentist covered by this part is eligible for market pay. Market pay is intended to reflect the recruitment and retention needs for the specialty or assignment of a particular physician or dentist at a VA facility.

b. At least once every two years, the Secretary prescribes nationwide minimum and maximum amounts of annual pay (base pay plus market pay) that will be paid under this paragraph. These amounts are published in the Federal Register for not less than 60 days prior to the effective date. The Secretary may prescribe different ranges for different specialties or assignments. In determining pay ranges, at least two or more national surveys of pay for physicians and dentists are consulted. National surveys consulted include data that describes overall physician and dentist income by specialization or assignment and benefits in broad geographic scope. Annual pay ranges approved by the Secretary are available on the Office of Human Resources Management [].

(1) When VA increases the nationwide minimum and/or maximum amounts of annual pay under this paragraph, physicians and dentists are not automatically entitled to a corresponding increase in their individual annual pay rates. Only physicians and dentists whose existing rate of annual pay falls below the newly prescribed nationwide minimum for their designated pay range will automatically receive an increase in market pay to make their annual pay rate equivalent to the new nationwide minimum. Compensation Panels review the market pay rates for individual physicians and dentists on a periodic basis under the provisions of paragraph 10.

(2) In the event that the nationwide minimum and maximum amounts of annual pay are reduced under this paragraph, physicians and dentists already on VA rolls will not experience a reduction in market pay.

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c. There may be up to four tiers of annual pay for each specialty or assignment for which a separate range of pay has been approved. Each tier reflects different professional responsibilities, professional achievements, or administrative duties. The tier [] definitions for the annual pay ranges established for individual clinical specialty [pay tables] are as follows. []

(1) **Tier 1.** Staff

(2) **Tier 2.** Program manager, supervisor or section chief

(3) **Tier 3.** Service chief, service line manager or other assignment for which the scope and complexity is determined to exceed the definition of Tier 2

(4) **Tier 4.** Network-level program manager or national program responsibilities requiring a specialty within the assigned pay table.

[NOTE: Consult the published pay tables on the Office of Human Resources Management Web site to determine the specific tiers and definitions that apply to particular specialties covered by pay tables 5, 6 and 7.]

(5) **Employees with Dual Assignments Appointed by VHA Headquarters.** The [local compensation panel will recommend an annual rate of pay for] a physician or dentist who is [dually] appointed to a VHA Headquarters position and who [also has an appointment at a local medical center or network. The Human Resources Office will refer the recommendation of the local Compensation Panel through the Workforce Management and Consulting Office (10A2) for final decision as to the tier and annual pay in consideration of the VHA Headquarters assignment.]

d. The amount of market pay and appropriate tier for a particular physician or dentist is recommended to the approving official by a Compensation Panel as described in paragraph 13 below.

e. The determination of the amount of market pay of a particular physician or dentist shall take into consideration:

(1) The level of experience of the physician or dentist in the specialty or assignment;

(2) The need for the specialty or assignment of the physician or dentist at the facility;

(3) The appropriate health care labor market for the specialty or assignment of the physician or dentist;

(4) The board certifications, if any, of the physician or dentist;

(5) The accomplishments of the physician or dentist in the specialty or assignment;

(6) The prior experience, if any, of the physician or dentist as an employee of the VHA;

(7) Consideration of unique circumstances, qualifications or credentials, if any, and the comparison of these circumstances to the equivalent compensation level of non-VA physicians or dentists in the local health care labor market; and

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(8) In Alaska, Hawaii, and Puerto Rico, the Office of Personnel Management has approved a non-foreign cost-of-living allowance (COLA) under 5 U.S.C. 5941 which is intended to address living costs substantially higher than those in Washington, DC, and/or conditions of environment substantially different from those in the Continental United States. The non-foreign COLA for physicians and dentists is calculated as a percentage of the employee's base pay only (the rate for a step on the Physician and Dentist Base and Longevity Pay Schedule). When determining market pay amounts for providers in these areas, the Compensation Panel should consider the COLA amount the provider will receive to ensure the provider is adequately, but not excessively, compensated for these issues.

NOTE: *The law requires the Compensation Panel to consider all factors. Where a provider spends a significant amount of time away from clinical duties within his/her specialty or assignment, the time spent away from clinical duties may impact on the provider's level of experience in the specialty or assignment, availability to work in the specialty or assignment, and/or accomplishments in the specialty or assignment, and may therefore be considered [] when recommending a market pay amount. [A provider's market pay may be reduced when the provider spends time away from performing clinical duties.]*

f. The Compensation Panel action will normally be recommended and a final decision made prior to the effective date of appointment. In unusual circumstances, a physician or dentist may be appointed without Compensation Panel review. The following conditions apply:

(1) The physician or dentist will be paid only the applicable base pay rate on the Base and Longevity Pay Schedule until a Compensation Panel action is approved.

(2) The physician or dentist must be reviewed by the appropriate Compensation Panel within the 30 days following the effective date of appointment.

(3) Once the Compensation Panel action is approved, the market pay rate will be retroactive to the effective date of the appointment.

g. Compensation Panel recommendations are taken into consideration by the appropriate approving official. The approving official determines the amount of market pay to be paid a physician and dentist after consideration of the annual pay (the sum of the base pay rate and market pay) recommended by the panel. The approving official's decision is final.

10. MARKET PAY ADJUSTMENTS FOR INDIVIDUAL PHYSICIANS AND DENTISTS

a. At least once every 24 months, the market pay of each physician and dentist is reviewed by the appropriate Compensation Panel (or approving official when a compensation panel is not required) in accordance with the criteria in paragraph 9e. Each physician and dentist will be provided a written notice of the results of the review, even if the review does not result in a pay adjustment. The Notification of Personnel Action, SF-50, as well as the Compensation Panel form VA 10-0432A, serve as the written notice. If an adjustment is made as a result of the biennial review, the effective date of such change will be retroactive to the first pay period following the biennial review due date.

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b. The market pay of a physician or dentist is also reviewed upon change in assignment and at any such additional times as deemed necessary or appropriate by an appropriate management official. Change in assignment refers to a permanent change in official duty station, change in duty basis (i.e., to/from full-time, part-time or intermittent), change in tier, [a change in the amount of time a physician or dentist spends performing non-clinical duties or activities (i.e., time spent away from performing clinical duties within the specialty or assignment),] or a significant change in duties or assignments as determined by an appropriate management official, such as call duty rotations, or assignment to/from a Community Based Outpatient Clinic. A market pay review, and any subsequent adjustment made based on a change in assignment, is effective the first pay period following approval of the compensation panel form.

c. A market pay review cannot result in a reduction in market pay for a physician or dentist remaining in the same position or assignment at the same duty station. Market pay may only be reduced upon change in assignment or as the result of a correction to the appointment action under the provisions of paragraph 7f.

d. The market pay amount authorized by the approving official is a final decision. There is no reconsideration process. However, employees may request reconsideration of a tier determination under the provisions of paragraph 11 below.

11. RECONSIDERATION OF TIER DETERMINATION

a. If a physician or dentist believes that his/her tier determination is improper based on the nature of his/her assignment, the employee may submit a request for reconsideration to the official that approved the tier recommendation. These reconsideration procedures do not apply to appointment actions.

(1) The request for reconsideration must be submitted in writing to the approving official (i.e., the official who approved the tier recommendation) within 30 days of the end of the pay period in which the pay determination is effected.

(2) The request must cite specific facts and circumstances that support the employee's belief that his/her tier determination is inappropriate.

b. If the facility director was the approving official on the original action, the facility director will consult with the VISN Chief Medical Officer regarding the reconsideration request. The facility director will consider the recommendation of the Chief Medical Officer and make a final decision regarding the tier reconsideration request. The facility director will provide a decision to the employee in writing. The facility director's final decision will be filed with the VA Form 10-0432A.

c. Any tier adjustments resulting from a reconsideration will be effective the beginning of the first pay period after the approving official's decision.

d. The decision of the approving official is final. There is no further reconsideration.

e. If the original action was taken at the Network level or above, the approving official's decision is final.

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a. [The purpose of performance pay is to improve the overall quality of care and health care outcomes through the achievement of specific goals and objectives related to the clinical, academic and research missions of VA.] Performance pay is intended to recognize the [degree to which an individual physician or dentist achieves] specific goals and performance objectives prescribed on a fiscal year basis by an appropriate management official. Physicians and dentists not excluded under paragraph 3 of this part are eligible to receive performance pay. The amount is determined solely at the discretion of the approving official based on the achievement of the specified goals and objectives and is paid annually as a lump sum.

b. The amount of performance pay established should be commensurate with the complexity and scope of the goals and objectives. The amount paid to any individual may vary based on the degree of execution and individual achievement of specified goals and objectives.

c. The amount of performance pay payable to any individual physician or dentist in a fiscal year is determined by the approving official based on the goals and objectives specified for the fiscal year. The amount payable may not exceed the lower of:

(1) \$15,000, or

(2) The amount that is equal to 7.5% of the annual pay in effect for the physician or dentist on September 30th of the fiscal year during the period of time under review.

NOTE: *The amount payable as performance pay to a part-time or intermittent employee shall [generally] be [prorated] based on the full-time equivalent salary. [] However, if there is no qualitative or quantitative difference between the expected contributions of a part-time employee and a similarly situated full-time employee [(e.g. when the same performance goals and objectives are used by both full-time, part-time employee)] their performance pay amounts should be equal.*

d. Physicians and dentists must be advised of the specific goals and objectives that will be measured in determining their eligibility for performance pay and the maximum monetary value associated with those goals and objectives. These goals and objectives and the maximum amount of performance pay available in connection with achieving the specified goals and objectives [must] be communicated by an appropriate management official to the individual physician or dentist within 90 days of the beginning of each fiscal year. For newly hired physicians and dentists, goals and objectives [must] be communicated within 30 days of their entrance on duty. [VA Form 10-0432, Performance Pay Recommendation & Approval will be used to document when goals and objectives are communicated to each employee.] Physicians and dentists hired after July 1 are not eligible for performance pay based on their performance within that fiscal year.

e. Performance goals and objectives are generally developed locally and will differ from performance standards used for the Executive Career Field (ECF) or proficiency rating systems. Examples of categories that may be addressed include outcomes, reduction of waiting times, patient panel sizes, research achievements, performance of compensation and pension exams or other additional tasks, timely completion of medical record documentation, adequacy of medical record documentation for billing purposes, patient satisfaction, exemplary conduct or behavior, teaching students or others, innovations, national priorities, and other areas where improvements, efficiencies or increased effectiveness are identified. Goals and objectives may also be set at the Network or Headquarters level.

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f. At the end of each fiscal year, each supervisor evaluates the degree to which each covered individual achieved the goals and objectives communicated at the beginning of the fiscal year. [] VA Form 10-0432 [must be completed and include a description of the goals and objectives achieved by the individual that supports the amount of performance pay. VA Form 10-0432 must also be completed if the employee has not successfully met the communicated goals and objectives and therefore is not being recommended to receive performance pay. In addition, supervisors and managers must document to what extent a performance or conduct related disciplinary/adverse action impacted an individual's ability to achieve performance pay goals and objectives and what effect, if any, the action had on the performance pay decision. Further, supervisors and managers must document to what extent the performance of part-time or intermittent work, and the effect, if any, the performance of non-clinical duties has had on the performance pay decision. VA Form 10-0432 must be forwarded through the appropriate chain of command to the designated approving official not later than March 31st of each year. Performance pay disbursements may not be made until VA Form 10-0432 is signed by the supervisor and employee and approved by the appropriate management official.]

g. Performance payments should be disbursed to employees as soon as possible after the end of the fiscal year but must be made no later than March 31 of the following year.

h. Physicians and dentists who separate from VA employment prior to September 30 are not eligible for performance pay based on their performance within that fiscal year.

i. For physicians and dentists who transfer during the fiscal year, the gaining facility will consult with the previous supervisor to determine the appropriate performance pay amount. For individuals who change positions during the year, performance under previously specified goals and objectives will be considered, and previous supervisors will be consulted as applicable, in determining the appropriate performance pay amount.

j. A physician's or dentist's failure to meet the criteria for performance pay may not be the sole basis for an adverse personnel action against that individual.

13. COMPENSATION PANELS

a. Function of Panels

(1) Compensation Panels are required for pay tables 1 through 5 and 7. Compensation panels are not required for pay table 6. Compensation Panels recommend the appropriate pay table, tier level and market pay amount (considering the combined sum of the base pay and market pay) for individual physicians and dentists. Appointment actions recommended by the Professional Standards Board require a separate review for a pay recommendation by the appropriate Compensation Panel. The Compensation Panel is also responsible for evaluating the annual pay (base pay and market pay) to include pay table and tier assignment of each physician and dentist under its jurisdiction at least once every 24 months (biennial review) and at such other times deemed necessary by the appropriate management official. A change in duty basis (i.e., to/from full-time, part-time, or intermittent), change in tier, [a change in the amount of time a physician or dentist spends performing non-clinical duties or activities (i.e., time spent away from performing clinical duties within the specialty/assignment),] or a

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significant change in duties or assignments as determined by an appropriate management official, such as call duty rotations, or assignment to/from a Community Based Outpatient Clinic will also require a re-evaluation of the market pay and tier by the Compensation Panel. Additionally, if it is anticipated that a change in assignment may result in a market pay or tier change, the Compensation Panel must be consulted. Supervisors or other management officials may make market pay and tier recommendations for physicians and dentists being reviewed by the Compensation Panel.

(2) The Compensation Panel will recommend the following with regard to pay for individual physicians or dentists:

(a) The appropriate specialty or assignment and pay table;

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(b) The appropriate tier for the physician or dentist using the tier definitions contained in paragraph 9 of this part or the tier definition [associated with] the pay [table], as appropriate; and

(c) A rate or an appropriate range of market pay for the physician or dentist considering the criteria in paragraph 9 of this part, other pay elements authorized for the individual (e.g., base pay, recruitment relocation or retention incentive, COLA, and the nationwide minimum and maximum amounts of annual pay prescribed by the Secretary for the specialty or assignment.

(3) Compensation Panel recommendations will be taken into consideration by the appropriate approving official. The approving official determines the amount of [annual] pay to be paid a physician or dentist after consideration of the [recommendation of the Compensation Panel.] The approving official's decision is final.

b. Composition of Panels. Each panel is comprised of at least three physician or dentist members, as applicable, one of which is designated as chairperson.

(1) Pay Tables 1-4 and 7/Tier 1

(a) At least one physician or dentist who holds a management position; and

(b) To the extent practicable, at least two physicians or dentists who are practicing clinicians and who do not hold management positions at the facility at which the physician or dentist being considered is or will be employed.

NOTE: *Physician panels will be comprised solely of physicians. Dentist panels at tier 1 will have at least two dentists.*

(2) Pay Tables 1-4/Tiers 2, [] 3, [and 4] and Pay Table 7/Tier 2. [In order to ensure the broadest available pool of members to constitute compensation panels for these assignments, at least three members in any combination of physicians and dentists paid from Tier 2, 3 or 4 of any pay table may form a compensation panel at this level.]

[(3)] Physicians and dentists may not be members of the convened panel that makes recommendations regarding their own pay.

NOTE: *It is recommended that facilities appoint a large number of panel members to increase the likelihood that three members will be available when necessary to constitute a panel.*

[(4)] Compensation Panel members and other employees having access to information presented or discussed during a Compensation Panel are required to retain that information in strict confidence. Individuals are subject to disciplinary action for violating the confidentiality of the proceedings and may also be barred from continued participation in the Compensation Panel process.

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[(5)] Compensation Panels will consider the comments of the supervisor of the physician or dentist as annotated in Part A of VA Form 10-0432A.

[(6)] The Human Resources Management Officer or designee or a VHA [Workforce] Management [and Consulting] Office representative will serve as technical advisor on all Compensation Panel recommendations. Compensation Panels are encouraged to consult with other administrative advisors, such as the Fiscal Officer. The approving official may also consult with administrative advisors when making pay decisions.

c. Location of Panels

(1) **Central Office Panels.** VA Central Office Compensation Panels [may be convened when the situation indicates that the annual pay decision should be made at the level of the Under Secretary for Health.]

(2) **VISN Panels.** VISN panels make [annual] pay range and tier recommendations for Chiefs of Staff, physicians and dentists under the jurisdiction of a Network Director, when a physician or dentist is proposed for [an assignment] that has network program responsibilities, when a local panel cannot be properly constituted, and/or when requested by the Facility Director or Network Director.

(3) **Facility Panels.** Facility panels make [annual] pay range and tier recommendations for physicians and dentists under the jurisdiction of the Facility Director for Tier 1, Tier 2, or Tier 3 assignments only (excludes the Chief of Staff). Specific actions may also be referred to the VISN panel when deemed necessary by the Facility Director or Network Director.

d. Approving Authorities for Panel Membership

(1) **Central Office Panels.** The Under Secretary for Health, or designee, approves membership of Central Office panels.

(2) **VISN Panels.** The Network Director, or designee, approves membership of VISN panels.

(3) **Facility Panels.** The facility Director, or designee, approves membership of local panels.

e. Documentation

(1) Compensation Panel recommendations and approving official annual pay determinations are documented on VA Form 10-0432A.

(2) VA Form 10-0432A is filed in the employee's [e-OPF].

14. PAY LIMITATIONS [AND EXCEPTIONS]

a. Except as provided in subparagraph b and subject to subparagraph c below, the annual pay of a physician or dentist may not be less than the minimum amount, nor more than the maximum amount of the applicable pay range and tier for the corresponding specialty/assignment. For part time employees, the full-time equivalent (i.e., not prorated) annual pay will be used to determine whether the annual pay is within the applicable pay range and tier.

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b. The annual pay for a physician or dentist may exceed the maximum amount of the applicable pay range and tier for the corresponding specialty/assignment only as a result of a longevity step increase to base pay (see paragraph 8) or as a result of a statutory general increase in base pay (see paragraph 7d). Exceptions to the maximum of the applicable pay range and tier for the corresponding specialty/assignment are permitted in unusual circumstances and may be requested under the provisions of subparagraph 14d below for individual exceptions or appendix B of this part for specialty or facility-wide exceptions.

c. In no instance may the aggregate pay (base pay; market pay; performance pay; recruitment, relocation, and retention incentive; and any other payment under title 38 authority) paid to a VHA physician or dentist in a calendar year exceed the amount of annual pay (excluding expenses) received by the President of the United States as specified in 3 U.S.C. 102. For part time employees, the actual earnings (i.e., annual pay is prorated) will be considered when determining whether this aggregate pay limitation will be exceeded. [For detailed information on the deferral of payments that exceed the aggregate pay limitation refer to VII, Chapter 2, this handbook.]

d. Annual pay (plus non-foreign COLA where applicable) in excess of the applicable pay range maximum and/or in excess of \$275,000 shall require higher level approval unless the increase is the result of a longevity step increase or a statutory general increase in base pay. For part time employees, the full-time equivalent (i.e., not prorated) annual pay will be considered when determining whether an exception is required.

(1) [The Medical Center Director is the approving official for annual pay up to \$275,000 and may also approve a tier exception for employees in pay tables 1, 2, 3, 4 and 7 that does not exceed the maximum for the next higher tier within the pay table up to \$275,000. The determination to approve a tier exception at this level will be based on a narrative justification that includes pertinent information on the recruitment and retention history of the position, the unique or exceptional qualifications of the individual, or other circumstances at the specific facility. The Medical Center Director may not approve tier exceptions for employees in pay tables 5 and 6.

(2)] The Network Director is the approving official for annual pay greater than \$275,000, not to exceed \$325,000 only when a tier exception is not required. Network offices shall establish procedures for submission of requests for exceptions to the pay limitation.

[(3)] The Under Secretary for Health is the approving official for all tier exceptions[, except those that can be approved at the Medical Center level]. The Under Secretary for Health is also the approving official for annual pay in excess of \$325,000. Requests to exceed (or further exceed) the \$325,000 limitation shall be submitted through [the Network Director] to VHA's Workforce Management and Consulting Office (10A2A) and shall contain the following information:

(a) A narrative justification for the proposed amount of annual pay, including any pertinent information on the recruitment and retention history of the position occupied or to be occupied by the physician or dentist[, the unique or exceptional qualifications of the individual, or other circumstances at the specific facility; and]

(b) The Compensation Panel recommendation as documented on VA Form 10-0432A.

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[(4)] Exceptions under subparagraphs (1)[,] (2) [or (3)] above will be disapproved if the approving official determines that a lesser amount of market pay is sufficient to be competitive for the recruitment and retention of a physician or dentist in the market for the required skills.

e. Exceptions requiring VACO approval under subparagraphs 14b and 14d(3) will be effective the beginning of the first pay period beginning on or after the date of approval, or 30 days from the date of receipt in VACO, whichever is earlier.

f. Annual pay for the Under Secretary shall be subject to the provisions of paragraphs 18 and 19 of this part.